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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,638	06/20/2006	Arie Krijgsman	C4296(C)	1940

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EXAMINER	
DOUYON, LORNA M	

ART UNIT	PAPER NUMBER
1796	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/550,638	KRIJGSMAN ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *12/15/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Objections

1. Claim 5 is objected to because of the following informalities: "methylacrylate" in line 2 is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claims 2-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, **claims 2 and 3** recite the broad recitation "greater than 5%" and "particle size of from 0.1 to 500 micrometers",

respectively, and the claim also recites "preferably…", "more preferably…", "most preferably… etc." which is the narrower statement of the range/limitation.

In claim 4, the Markush language is improper. It is suggested that "comprising;" in line 3 be replaced with "consisting of".

In claim 5, the phrase "a perfume granule" (see lines 1-2) lacks support with respect to claim 4 which recites "bleach or enzyme or effervescent granules".

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable Takenouchi et al. (US Patent No. 3,925,226), hereinafter "Takenouchi".

Takenouchi teaches coating a hollow-granular detergent with a metallic soap powder in the range from 0.3-15 parts by weight, preferably 0.5 to 10 parts by weight, relative to 100 parts by weight the detergent, wherein the metallic soap is a calcium salt or magnesium salt of saturated fatty acid having 16-20 carbon atoms and having a particle diameter of less than 100 μ (see col. 3, lines 23-47), for example, magnesium stearate having a particle diameter of less than 10μ (see col. 6, lines 2-3). In Example 1, the hollow-granular detergent comprises 9 g (or 9 wt%) water (see col. 4, lines 59-68),

which corresponds to the hygroscopicity values recited in claims 1 and 2. Takenouchi, however, fails to specifically disclose the proportion of the magnesium stearate in amounts as those recited (i.e., 2.5 to 5 wt%).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See *In re Boesch,* 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller,* 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

In addition, a *prima* facie case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim,* 541 F.2d 257,191 USPQ 90 (CCPA 1976; *In re Woodruff;* 919 F.2d 1575,16USPQ2d 1934 (Fed. Cir. 1990). See MFEP 2131.03 and MPEP 2144.05I.

5. Claims 1-2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cala et al. (US Patent No. 4,196,095), hereinafter "Cala".

Cala teaches a dry blended, carbonate-based detergent composition containing from about 30 to about 90% by weight of an unhydrated or partially hydrated hydratable

builder salt, at least half of said builder salt being sodium carbonate (which is an effervescent), to which is added magnesium stearate, as a dry powder, in the range from about 0.1 to about 10% by weight (see claim 2; col. 3, lines 47-51). The detergent composition also comprises oxidizing agents such as percarbonate or perborates (see col. 1, lines 40-44). Cala, however, fails to specifically disclose the magnesium sulfate being layered onto the surfaces of the detergent composition, its recited amount and the hygroscopicity value of the detergent composition.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the magnesium stearate to be layered onto the surfaces of the detergent composition because in col. 3, lines 47-50, Cala teaches that the magnesium stearate may be incorporated into the product after the liquid components, hence, such an addition would have caused the magnesium stearate to be layered onto the surfaces of the detergent composition.

With respect to the amount of magnesium stearate, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578,16

USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller,* 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955). In addition, a *prima* facie case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim,* 541 F.2d 257,191 USPQ 90 (CCPA 1976; *In re Woodruff;* 919 F.2d 1575,16USPQ2d 1934 (Fed. Cir. 1990). See MFEP 2131.03 and MPEP 2144.05I.

With respect to the hygroscocity of the detergent composition, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the hygroscocity of the detergent composition of Cala to exhibit a hygroscopicity value within those recited, considering the ingredients of the detergent composition, i.e., the presence of the sodium carbonate.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cala as applied to claims 1-2 and 4 above, and further in view of Takenouchi.

Cala teaches the features as described above. Cala, however, fails to disclose the particle size of the magnesium stearate.

Takenouchi teaches the features as described above. In particular, Takenouchi teaches that magnesium stearate has a particle diameter of less than 100 μ (see col. 3, lines 23-47), preferably less than 10μ (see col. 6, lines 2-3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the magnesium stearate of Cala to have a particle size of less than 100 μ, or less than 10μ because Cala specifically desires the magnesium stearate to be in dry powder form and it is known from Takenouchi that

magnesium stearate, in an analogus art, has particle size of less than 100 μ, or less than 10μ.

Allowable Subject Matter

7. Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record teaches, discloses or suggests a free-flowing particulate detergent composition or component comprising a perfume granule comprising maltose and polybutyl methylacrylate, wherein the recited amount of particulate magnesium stearate is layered onto the surfaces of the detergent composition or component.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1796